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City of Waco

March 17, 1994

Certified Mail — Return  
Receipt No. P 309 140 117

Attorney General's Office  
Opinion Committee  
Supreme Court Building  
P.O. Box 12548, Capital Station  
Austin, Texas 78711-2548

FILE #

I.D.#

RE: Request for Decision Under Open Records Act — Brady Applications

Dear Sirs:

On March 11, 1994, the Waco Police Department received a request from Douglas Doe at the *Waco Tribune-Herald* for copies of "applications filed under the Brady Law which have been rejected by [the Waco Police] department." The Waco Police Department believes that such records are excepted from release under §552.101 or §552.108 of the *Texas Government Code* as information considered to be confidential by law or maintained by law enforcement as an internal record for internal use. Therefore, the Waco Police Department is requesting an opinion from the Attorney General's Office regarding the application of the exceptions cited.

Under the Brady Handgun Violence Prevention Act, an individual (transferee) seeking to purchase a handgun must complete form ATF F 5300.35, Statement of Intent to Obtain Handgun(s). The federal firearm licensee (transferor) from whom the individual seeks to purchase the handgun then files a copy of that form with the chief law enforcement officer of the place of resident of the individual (transferee). The chief law enforcement officer has five days within which to make a determination that the individual (transferee) is ineligible to receive a handgun<sup>1</sup> and notify the federal firearm licensee of that fact. Unless the chief law enforcement officer determines that the individual (transferee) is ineligible to obtain a handgun, the officer must destroy the Form 5300.35 transmitted to him, all records containing information derived from the form, and all records created as result of the form within 20 days of receipt of the form. The law specifically states that "information contained in the statement [of intent to obtain a

<sup>1</sup> Grounds for determining an individual is ineligible to purchase a handgun that can be determined by accessing criminal history information include that the transferee: (1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; (2) is a fugitive from justice; or (3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act). It is anticipated that criminal convictions for a crime punishable for a term exceeding one year or drug arrests or convictions indicating that the individual is an unlawful user of or addicted to a controlled substance will be the primary reasons for rejection.

handgun(s)] shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection." Sec. 922 in (6)(B)(ii), Title 18.

In conducting the background checks required under the Brady Bill, the Waco Police Department accesses compiled criminal history information through the T.L.E.T.S. T.C.I.C. system operated and maintained by the Texas Department of Public Safety (D.P.S.).<sup>2</sup> *Texas Government Code* §411.083 declares criminal history information maintained by D.P.S. to be confidential and prohibits dissemination except as provided by subchapter F of Chapter 411. Information obtained from D.P.S. through T.C.I.C. can only be disclosed by a recipient as set forth in §411.084. The unauthorized disclosure of criminal history information is a criminal offense under §411.085.

If the Waco Police Department provides copies of Forms 5300.35 to the anyone, the Department will be revealing that the individual who submitted the application has a compiled criminal history record with D.P.S. Under *Houston Chronicle I* and various sections of Chapter 411 of the *Texas Government Code*, the Waco Police Department believes that acknowledging that an individual has a compiled criminal history with D.P.S. is protected under §552.101 or §552.108 of the Open Records Act. By only asking for the rejected applicants' forms,<sup>3</sup> the requestor is asking the Waco Police Department to reveal the identity of persons who have compiled criminal history files maintained in T.C.I.C. or N.C.I.C. and who are probably convicted felons.

Under the Brady Bill, an individual (transferee) who is "rejected" by a chief law enforcement officer has the right to request the officer to provide the reason for determining the individual was ineligible to receive a handgun. The officer must respond to the request within 20 days of receipt. If that individual is able to show that the officer's determination was in error, the officer can change the determination and notify the federal firearm licensee that the person is eligible to purchase the handgun.<sup>4</sup> All of the information and documents generated as result of the application would then fall under the provisions requiring that the documents be destroyed within 20 days and that the information only be conveyed to a person who has a need to know in order to carry out the requirements of the law. See Sec. 922 in (6)(B), Title 18.

The law does not specify a time period within which the individual (transferee) may request the reason for the determination of ineligibility from the chief law enforcement officer. Consequently, that individual could request the information a day later, a week later, a month later, etc. If the Department has provided anyone, such as the requestor in this case, with a copy of the "rejected" applicant's Form 5300.35, but later determines that the rejection was in error,

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<sup>2</sup> The Department runs a criminal history check that shows not only the criminal history in the state of Texas, but also information from other states. In ORD No. 565, criminal history information accessed through N.C.I.C. was held to be confidential.

<sup>3</sup> The Brady Bill specifically prohibits the release of the "approved" applications.

<sup>4</sup> The Waco Police Department has already had several incidents where an individual requested information on the reason for his rejection in the purchase of a handgun. In a couple of these cases, the person has been able to produce information showing that he had not been convicted of a felony, so the Department withdrew the "rejection."

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the Department will be placed in the position of having violated federal law by releasing information about the application to a party who does not need to know the information in order to carry out the purposes of the Brady Bill. If a person's name has been released as a rejected applicant, with a resulting publication of his name as a probable convicted felon, and it later turned out that the criminal history record was not correct or misleading,<sup>5</sup> that person might consider the publication of his name to be embarrassing and highly objectional.

The Department is prepared to provide the news media or any interested person with statistical information on the number of applications received and the number of applications rejected.<sup>6</sup> It would appear that this is the information that the public has an interest in obtaining. Obtaining the name, residence address, and date of birth of applicants does not appear to be information that serves any public interest.

Enclosed for your review in connection with this request for an opinion is a copy of the request filed with the Department on March 11, 1994, a sample copy of a Form 5300.35, and a copy of the Brady Bill.

If you need any other information, please let me know.

Sincerely,



Annette Jones  
Police Legal Advisor

cc: Gilbert E. Miller, Chief of Police (letter only)  
Maria D'Marco, Communications Supervisor (letter only)  
City Attorney's Office (letter only)

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<sup>5</sup> Errors in criminal history records can occur for a number of reasons. In some cases, errors have occurred because individuals may have the same, or very similar, names and birthdates. There are also cases where the criminal history record obtained is confusing. The Waco Police Department has already dealt with one instance where a criminal history showed an arrest on a felony charge and a conviction. When the person raised a question about the record, further investigation was done which showed the charged was reduced to a misdemeanor, which is what the conviction was for.

<sup>6</sup> This has in fact been done as requested by the news media.



CITY OF DALLAS

RQ-815

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VIA FACSIMILE  
(512) 463-2092

March 2, 1994

Honorable Dan Morales  
Attorney General of Texas  
Price Daniel Building, 7th Floor  
P.O. Box 12548  
Austin, Texas 78711

MAR 03 94

FILE # ML-24999-94

I.D.# 24999

RE: Open Records Request

Dear General Morales:

By letter dated March 1, 1994 (Exhibit "A"), and received by the Dallas Police Department on that same date, Mr. Al Brumley of the Dallas Morning News made the following Open Records Request:

Names and addresses of all persons who applied for the purchase of a handgun between Feb. 28 and March 1 and were rejected by the Dallas Police Department under provisions outlined in the Brady Bill.

This Office is responsible for representing the legal interest of both the City of Dallas and the Records Division of the Dallas Police Department, the office designated by the City of Dallas to handle the Brady Bill information process. In our opinion, the "Brady Handgun Violence Prevention Act", 18 U.S.C. 922 (1993), deems that this information is confidential. Section 922(s)(6)(B) provides:

Unless the chief law enforcement officer to whom a statement [provided by the person purchasing the gun] is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law-

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement *shall not be conveyed to any person* except a person who has a need to know in order to carry out this subsection ; and

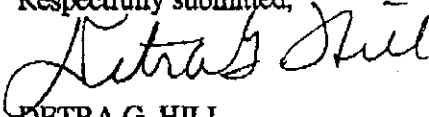
(iii) the information contained in the statement *shall not be used for any purpose other than to carry out this subsection.* (Emphasis added).

It is the position of this Office that the clear intent of this provision is to make information contained in the statement by the potential purchaser(transferee) of the handgun confidential for all purposes. Therefore, pursuant to Art. 6252-17a sec. 3(a)(1) (Vernon Supp. 1993), the names and addresses of persons whose applications were rejected by the Dallas Police Department are confidential by law and may not be disclosed as public information.

March 2, 1994  
Honorable Dan Morales  
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Please confirm whether this Office's interpretation of this provision from the "Brady Handgun Violence Prevention Act" is correct.

Respectfully submitted,



DETRA G. HILL  
Assistant City Attorney  
Criminal Law and Police Division

c: Al Brumley  
Staff Writer  
*The Dallas Morning News*  
P.O. Box 655237  
Dallas, Texas 75265

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